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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KEITH JAMES HUDSON, Defendant.	No. 3:16-CR-00214 (RS) **UNITED STATES' OPPOSITION TO THE DEFENDANT'S MOTION FOR RECONSIDERATION**

I. Introduction.

Hudson and his co-defendant hacked into someone else's email account, obtained compromising photos of several people, and then extorted those people by threatening to post the photos online. Hudson was convicted of violating 18 U.S.C. §§ 1030(a)(2)(c), (c)(2)(B)(I), and (c)(2)(B)(ii), which collectively criminalize unauthorized access to a protected computer to obtain information. Hudson was sentenced to two years in prison, followed by three years of supervised release. In May 2016, jurisdiction over his supervised release was transferred to this District under 18 U.S.C. § 3605. *See* Dkt No. 1. Hudson moved to terminate his sentence early, *see* Dkt. No. 2, and this Court denied his motion in December 2016, *see* Dkt. No. 10.

Hudson now moves for reconsideration. *See* Dkt. No. 12. His motion does not raise any new facts, nor any intervening change in controlling law. Instead, he aims to relitigate matters that were raised in his original motion. Since that is not a valid reason to grant a motion to reconsider, Hudson's motion should be denied.

II. Legal standard.

Although a motion to reconsider is not found in the Federal Rules of Criminal Procedure, courts have recognized that motions to reconsider are "ordinary elements of federal practice that exist in criminal prosecutions." *United States v. Rollins*, 607 F.3d 500, 502 (7th Cir. 2010) (Easterbrook, J.) (citing *United States v. Healy*, 376 U.S. 75 (1964)). Reconsideration motions are generally treated like those in civil suits. *Id.*

In the civil context, reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 944-45 (9th Cir. 2003); *see also Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (motions to reconsider "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to" the original ruling) (citation omitted). Accordingly, "a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Nakatani*, 342 F.3d at 944-45 (citations omitted).

III. Hudson has not put forward any reason warranting relief.

Hudson claims that this Court erred by weighing the seriousness of his crime, *see* Dkt. No. 12 at 2, but he is incorrect. When deciding a motion to terminate supervised release, 18 U.S.C. § 3852(e) instructs courts to consider 18 U.S.C. § 3553(a)(1)—namely, "the nature and circumstances of the offense and the history and characteristics of the defendant." So it was entirely proper for the Court to consider the nature and circumstances of Hudson's crime and to observe that his crime was serious.

Hudson also claims that the Court erred by citing *United States v Lussier*, 104 F.3d 32 (2nd Cir 1997). *See* Dkt. No. 12 at 3-4. Specifically, Hudson maintains that *Lussier* does not mean that a modification of supervised relief *must* be predicated on "changed circumstances"; to a certain extent, he is correct. The Ninth Circuit has explained that a district court can modify a supervised release sentence even if there are no new circumstances. *See United States v. Bainbridge*, 746 F.3d 943, 950 (9th Cir. 2014) (citing *Lussier* and explaining that "a district court can modify a defendant's conditions of supervised release pursuant to 18 U.S.C. § 3583(e)(2) *even absent* a showing of changed circumstances.") (emphasis added). But Hudson's argument is purely academic: changed circumstances are a perfectly good reason to change the defendant's sentence. *See* Fed. R. Crim. P. 32.1, advisory committee's note to 1979 addition ("Probation conditions should be subject to modification, for the sentencing court must be able to respond to *changes in the probationer's circumstances* as well as new ideas and methods of rehabilitation.") (emphasis added); *see United States. v. Miller*, 205 F.3d 1098, 1101 (9th Cir. 2000) ("Here, Miller alleges a type of *changed circumstance* that, if true, *may justify* judicial modification of a defendant's supervised release.") (emphasis added). The obverse is equally true: it was proper for the Court to observe that there were no new facts warranting a change in the defendant's sentence.

Hudson reiterates that he has made progress on supervised release. Dkt. No. 12 at 5-6. (Again, his claims are unverified.) But the Court was correct when it stated earlier that Hudson's achievements "are laudable, but they are expected milestones rather than a change of circumstances rendering continued supervision inappropriate." Dkt. No. 10 at 3.

IV. Conclusion.

Hudson's motion for reconsideration should be denied.

Dated: May 9, 2017

Respectfully submitted,

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